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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 David H. Barnes; Trisha Barnes, husband)
and wife,

10 Plaintiffs,

11 vs.
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13 City of Phoenix, a political subdivision of)
the State of Arizona, et al.,

14 Defendant.
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No. CV 09-1767-PHX-JAT

ORDER

17 Pending before the Court is Plaintiffs David H. Barnes and Trisha Barnes' Motion to
18 Remand (Doc. # 23). For the reasons that follow, the Court grants Plaintiffs' motion.

19 In August 2009, Plaintiffs filed this action in the Maricopa County Superior Court.
20 Shortly thereafter, Defendants removed Plaintiffs' action to this Court on the basis that
21 certain of Plaintiffs' claims involved alleged violations of federal law. In an October 22,
22 2009 Order, the Court dismissed all of Plaintiffs' federal law claims. Hence, all that remain
23 are Plaintiffs' state law claims. Plaintiffs now seek to have this action remanded to state
24 court.

25 In the Ninth Circuit, "if a claim 'arising under' federal law existed at the time of
26 removal, the federal court has discretion to retain jurisdiction to adjudicate pendent state
27 claims even if at some point the federal claim has been dropped." *Millar v. Bay Area Rapid*
28 *Transit Dist.*, 236 F.Supp.2d 1110, 1116 (N.D. Cal. 2002) (citing *Carnegie-Mellon Univ. v.*

1 *Cohill*, 484 U.S. 343, 350 (1988)). In deciding whether to exercise discretion to retain
2 jurisdiction over the pendent state law claims, the factors the Court should consider include
3 judicial economy, convenience, fairness, and comity. *Millar*, 236 F.Supp.2d at 1119 (citing
4 *Acri v. Varian Assocs.*, 114 F.3d 999, 1001 (9th Cir. 1997)). The Court also “may consider
5 whether plaintiff has engaged in ‘manipulative tactics’ - i.e., is dismissing federal claims in
6 an exercise in unprincipled forum shopping.” *Id.* (citing *Carnegie-Mellon Univ.*, 484 U.S.
7 at 357).

8 Considering the above factors, the Court declines to exercise its discretion to retain
9 jurisdiction over the pendent state law claims. First, issues of judicial economy weigh in
10 favor of remand. The Court’s involvement in this case has been limited to a single motion
11 to dismiss—which addressed only certain of Plaintiffs’ claims—a Rule 16 scheduling
12 conference and, relatedly, the issuance of a pre-trial order. Further, the Court has not
13 performed any substantive legal analysis that will need to be repeated by the state court and
14 a trial is not imminent. Second, issues of comity also weigh in favor of remand. While the
15 state law claims are based on intentional infliction of emotional distress, whistle blowing
16 under A.R.S. § 38-352, and loss of consortium, which claims do not appear to present novel
17 issues of state law, the Court finds that it is preferable for a state court to apply state law to
18 Plaintiffs’ state law claims. Third, issues of convenience and fairness do not favor either
19 retention of the case or remand. Both the federal and state forums are convenient in that both
20 are located in Phoenix and Defendants have not provided any evidence to show that litigating
21 in state court, as opposed to federal court, would otherwise be unfair. Finally, the Court finds
22 that Plaintiffs have not engaged in improper forum shopping, as is evidenced by the fact that
23 Plaintiffs’ opposed Defendants’ motion to dismiss their federal causes of action. Although
24 Defendants complain of Plaintiffs’ decision to file their motion to remand until after the Rule
25 16 scheduling conference, the Court does not find any bad faith or dilatory motives on the
26 part of Plaintiffs.

27 Based on a consideration of the foregoing factors, the Court declines to exercise its
28 discretion to retain jurisdiction over the pendent state law claims and will remand this case

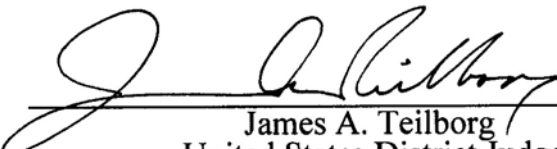
1 to the Maricopa County Superior Court. Defendants request for attorneys' fees and costs is
2 denied.

3 Accordingly,

4 **IT IS ORDERED** that Plaintiffs David H. Barnes and Trisha Barnes' Motion to
5 Remand (Doc. # 23) is granted.

6 **IT IS FURTHER ORDERED** that this action is remanded to the Maricopa County
7 Superior Court for the State of Arizona.

8 DATED this 5th day of April, 2010.

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12 James A. Teilborg
13 United States District Judge
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